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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,116	12/05/2000	Robert Manuel Carmichael	10464.6803	8544
44538	7590	12/15/2005		
DANIEL S. POLLEY, P.A. 1215 EAST BROWARD BOULEVARD FORT LAUDERDALE, FL 33301			EXAMINER VASUDEVA, AJAY	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/730,116	CARMICHAEL, ROBERT MANUEL	
	Examiner	Art Unit	
	Ajay Vasudeva	3617	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/09/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-21 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Applicant has withdrawn the priority claim to the '836 application because such claim was held invalid (see *Decision on Petition*, dated 1/07/2007). Additionally, applicant has also amended the specification by deleting the statement of priority.

Therefore, the effective filing date of the instant invention is held to be 12/05/2000.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 14 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (US 5,944,450 A).

Anderson shows an active control releasable ballast system (figure 3) having a ballast receiving pocket [30], a ballast containing pouch [34], and a release system comprising first and second sections [82, 84].

Regarding the newly added limitation “**by the user holding and operating the side release buckle**”, such is being treated as merely a functional limitation in an apparatus claim. Applicant may note that claims directed to an apparatus must be distinguished

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from the prior art in terms of structure rather than function (see MPEP 2114). If the prior art discloses all claimed structural limitations and is capable of performing the recited function, then it meets the requirements of the claim.

While the Anderson reference does not specifically disclose the release of the ballast pouch as being achieved by the user holding and operating the side release buckle, applicant may note that a user could first hold and release the side release buckles for a disengagement, and then tug at the first section 82 while the buckle section 84 was disengaged from it, thereby causing a release of the ballast pouch. In the present case, the release of the buckles is considered to be equivalent to the "operating the side buckle" limitation. Because the ballast system of Anderson is capable of being released by a user holding and operating the side release buckle, as explained above, such is considered as satisfying the limitations of the claims.

4. Claims 1-8 and 12-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Angelini et al. (US 6,527,480 B2).

Angelini et al. shows an active control releasable ballast system having a ballast receiving pocket [38], a ballast weight [54] stored in a pouch [40], and retaining system comprising first and second straps [70, 74]. A handle [76] is attached to one of a pouch and the ballast weight for its removal from the receiving pocket.

It is noted that the '480 reference is a different inventive entity, and is not co-owned.

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Allowable Subject Matter

5. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6.

Response to Arguments

7. Rejection of claims 14 and 21 under 35 U.S.C. 102 (b) as being anticipated by Anderson ('450 A):

Applicant has argued that the Anderson reference does not show a release of ballast "by the user holding and operating the side release buckle". It is noted that the newly added limitation is being treated as merely a functional limitation in an apparatus claim. Applicant may note that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function (see MPEP 2114). Because the Anderson reference discloses all claimed structural limitations and is capable of performing the recited function, it is considered as meeting the requirements of the claim. See ¶13 in this Office action for more details.

8. Rejection of claims 1-8 and 12-21 under 35 U.S.C. 102 (f):

In view of applicant's arguments, such rejection is being withdrawn.

9. Rejection of claims 1-8 and 12-21 under 35 U.S.C. 102 (e):

Applicant has newly submitted the following:

(i) a declaration (hereby Carmichael declaration #2) under 37 CFR 1.131,

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- (ii) Exhibit A, comprising a printout of the Halcyon website, dated August 22, 2000, and previously cited by the examiner. The applicant, as stated in a previous affidavit, owns the Halcyon company.
- (iii) Exhibit B, comprising undated informal drawings similar to the ones included in the instant application.

Applicant had previously submitted the following:

- (iv) a declaration (hereby Carmichael declaration #1) under 37 CFR 1.131, and
- (ii) a supporting affidavit by Mr. Joseph Stella (hereby Stella affidavit), whose company is the assignee of record in the '480 Patent, and in its parent '836 application that was applied for a rejection under 102(f).

Applicant has argued that the above-submitted materials sufficiently establish a conception of the invention, diligence, or alleged actual reduction to practice prior to the effective date of the Angelini Patent ('480) applied as prior art under 102(e).

The examiner, however, is of the opinion that none of the above submitted materials is sufficient to overcome the '480 Patent due to the following reasons:

(A) The evidence submitted with the Carmichael declarations #1 and #2 still lacks sufficient showing of facts, and therefore, is insufficient to establish (i) a conception of the invention, (ii) diligence, or (iii) alleged actual reduction to practice prior to the effective date of the above-mentioned reference. Specifically, the undated illustrations are not considered as sufficient to prove evidence of the conception, diligence, or alleged actual reduction to practice prior to July 31, 2000, which is the effective filing date of the '480 Patent.

Note: See MPEP 2137. Also see MPEP 715 (II)(H) for guidance regarding situations where the 1.131 declaration is considered inappropriate.

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(B) The exhibits with the Stella affidavit -- which refers to a quick disconnect release system -- fail to conclusively show whether or not such system is the same invention as being discussed by the applicant. Specifically, the drawings of the attached exhibits are not clear in showing any side release system.

Conclusion


10. This is a Non-Final action. Applicant is offered another opportunity to submit additional evidence for overcoming the 102(e) rejection based on the '480 Patent.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva
Examiner
Art Unit 3617


11/30/05
AJAY VASUDEVA
PATENT EXAMINER